

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Lester W. Bivens,

Plaintiff,

vs.

Michael J. Astrue, Commissioner of
Social Security,

Defendant.

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C/A No.: 3:07-02138-MBS

OPINION AND ORDER

Plaintiff Lester W. Bivens filed an application for a period of disability and disability insurance benefits on April 8, 2004, alleging disability commencing January 9, 2003 because of bilateral hearing loss; status post right ankle fracture and surgery; status post left leg fracture left shoulder rotator cuff strain/tear; arthritis of the right ankle and knee; degenerative disk disease of the lumbar spine; herniated disc at L 5-S1; major depression, single episode; anxiety; and borderline intellectual functioning. The application was denied initially and upon reconsideration. Plaintiff requested a hearing before an administrative law judge (“ALJ”). The ALJ held a hearing on June 22, 2005. On June 20, 2006, the ALJ issued a decision that Plaintiff was not disabled under sections 216(i) and 223(d) of the Social Security Act. On May 21, 2007, the Appeals Council determined that there was no basis for granting Plaintiff’s request for review. Plaintiff thereafter brought the within action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the “final decision” of the Commissioner.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Joseph R. McCrorey for a Report and Recommendation. On August 28, 2008, the Magistrate Judge filed a Report and Recommendation in which he determined

that the Commissioner's decision is not supported by substantial evidence. The Magistrate Judge recommended that the Commissioner's decision be reversed and the case remanded under sentence four of 42 U.S.C. § 405(g) for the Commissioner to properly consider whether Plaintiff met the listings at § 12.05C, and, if necessary, to continue the sequential valuation process. No party filed objections to the Report and Recommendation. On September 15, 2008, the Commissioner filed a notice that he would not file objections to the Report and Recommendation.

The court is charged with making a *de novo* determination of any portions of the Report of Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After a thorough review of the Report and the record in this case, the court adopts the Report and Recommendation and incorporates it herein by reference. Accordingly,

It is ORDERED that the Commissioner's decision be reversed and the case be remanded pursuant to sentence four of § 405(g) for further administrative proceedings as set forth herein and in the Report and Recommendation.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

September 17, 2008.